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Date October 23, 2003
Attorney Docket No.5677-142

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Group Art Unit: **1654**

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COMMENTS:

CERTIFICATE OF FACSIMILE TRANSMISSION

Serial No.: 09/717,445

Filed: November 21, 2000

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Date: October 23, 2003



By: Tricia D'Agostino

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NYB 1439267.1

Appl. No. 09/717,445
Response to 10/15/06 Notice of Non-Compliant Amendment
Docket No. 5677-142

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10/23/03
TRICIA D'Agostino
Tricia D'Agostino
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/717,445
Applicant : Leo J. Romanczyk Jr., et al.
Filed : November 21, 2000
Title : Foods Containing A Cocoa Polyphenol Additive

TC/A.U. : 1654
Examiner : Christopher Tate

Docket No. : 5677-142

TRANSMITTAL LETTER

Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SIR:

This is submitted in response to the Notice of Non-Compliant Amendment mailed October 15, 2003. A response is due November 15, 2003.

Section "Amendments to the claims" is resubmitted. It provides the status of Claims 1-43, i.e., canceled. Please note the Notice states Claims 1-44 are not identified. That is not correct. The text of Claim 44 was provided and it was amended.

Respectfully submitted,

Date:

October 23, 2003Margaret B. Kelley

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Paper No.

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 10/3/03 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following omission(s) or provision is required. Only the section (1.121(h)) of the amendment document containing the omission or non-compliant provision must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted.

THE FOLLOWING CHECKED (X) ELEMENTS(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings: _____
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all claims (incl. withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☐ E. Other: Claims 1-44 are not identified

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/wcb/offices/pac/dapp/opla/preognotice/officflyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION**, and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD OF ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Blonia J. Hammell
Legal Instruments Examiner (LIE)
703-308-4277

July 22, 2003 (rev.)